

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VIRGIL L. BROWN,

Plaintiff,

v.

CITY OF SACRAMENTO, ART
VENEGAS, HARRISON SUGAWARA,
LAURA ABE, D. ROSEN, MICHAEL
GALIPEAU, et al.,

Defendants.

CIV-S-01-610 DFL PAN

MEMORANDUM OF OPINION
AND ORDER

Defendant Harrison Sugawara ("Sugawara") renews his motion for qualified immunity. For the reasons stated below, the court DENIES Sugawara's motion.

I.

On October, 29, 2003, the court denied Sugawara's motion for summary judgment. (10/29/2003 Order at 4-5.) The court found that a factual dispute precluded finding that Sugawara was entitled to qualified immunity because "Sugawara assert[ed] that . . . he was trapped in the car door and Brown was using his car as a deadly weapon against him," and "Brown denie[d] these

1 assertions and claim[ed] that Sugawara shot him for no reason."
2 (Id. at 5.) The court noted that "if, as Brown asserts, Sugawara
3 shot him as he drove away, with no indication that Brown was an
4 immediate danger to Sugawara or others, it should have been clear
5 to Sugawara that shooting Brown would violate his constitutional
6 rights." (Id.) Therefore, the court allowed the case to proceed
7 on Brown's "assertion that the officers shot him 'for no reason'
8 and that he 'did not drive his car toward or into said
9 Defendants.'" (Id.)

10 On November 8, 2005, the court allowed Sugawara to renew his
11 motion for summary judgment based on Brosseau v. Haugen, 543 U.S.
12 194 (2004)." (11/8/2005 Order.) On January 24, 2006, the court
13 requested supplemental briefing on what material facts remained
14 in dispute. (1/24/2006 Order.)

15 II.

16 Sugawara renews his motion for summary judgment arguing that
17 he is entitled to qualified immunity based on two recent
18 decisions: (1) Brosseau v. Haugen, 543 U.S. 194, 125 S.Ct. 596
19 (2004); and (2) Blanford v. Sacramento County, 406 F.3d 1110 (9th
20 Cir. 2005). (Mot. at 3-8.) "A moving party may renew a motion
21 for summary judgment notwithstanding denial of an earlier motion
22 by showing a different set of facts or some other reason
23 justifying renewal of the motion." Carnegie Mellon Univ. v.
24 Hoffman La Roche Inc., 148 F.Supp.2d 1004, 1010 (N.D. Cal. 2001).

25 In Brosseau, the Court found that a police officer, Rochelle
26 Brosseau, was entitled to qualified immunity for shooting Kenneth

1 Haugen in the back as Haugen attempted to flee in his vehicle.
2 543 U.S. at 597. Sugawara argues that the facts in Brosseau are
3 similar to his situation. (Mot. at 5.) He claims that Brown,
4 like Haugen, was armed with a deadly weapon, a car, when he
5 failed to respond to a police officer. (Id.) In addition,
6 Sugawara asserts that he knew that the other officers were in the
7 path of Brown's vehicle. (Id.) Therefore, Sugawara concludes
8 that he is entitled to qualified immunity because he acted to
9 protect his fellow officers. (Id.)

10 In Blanford, the Ninth Circuit upheld the district court's
11 grant of qualified immunity to police officers who shot Blanford
12 after he refused to drop his weapon. 406 F.3d at 1113-1115. The
13 court found that the officers' had probable cause to believe that
14 Blanford posed a threat because he "was armed, refused to give up
15 his weapon, was not surrounded, and was trying to get inside a
16 private residence" Id. at 1117-18.

17 Sugawara argues that his situation was similar to the
18 officers in Blanford. (Mot. at 6.) Like those officers,
19 Sugawara claims that he realized that Brown would not obey his
20 command to stop the car. (Id. at 7.) In addition, Sugawara
21 asserts that Brown posed an actual risk to the other individuals
22 located at the scene. (Id.)

23 In support of his argument, Sugawara includes three
24 additional pieces of evidence: (1) Abe's statement that she saw
25 Sugawara caught in the driver's side door of Brown's vehicle and
26 she thought that Brown was going to kill Sugawara (Abe Decl. ¶

1 5); (2) Abe's statement that Brown drove towards her and the
2 other officers (Id. ¶ 6); and (3) Sugawara's claim that he was
3 concerned about the other officers in the area and the danger
4 Brown would pose to the public if he fled the scene (Sugawara
5 Decl. ¶ 13).

6 Brown responds by introducing testimony by Sugawara from
7 Brown's preliminary hearing in Sacramento County Superior Court
8 on May 19, 1999. At that hearing, Sugawara testified that at the
9 time of the "actual shooting," he did not see the other police
10 officers in front of Brown's vehicle. (Ex. A to Def.'s Supp.
11 Brief at 14.) This appears to contradict Sugawara's statement in
12 his declaration "that there were other officers in the vicinity
13 of the sidewalk on the west side of the street who were in danger
14 if Brown continued speeding forward without turning." (Sugawara
15 Decl. ¶ 13.) It might also conflict with Abe's statement that
16 Brown drove towards her and the other officers. (Abe Decl. ¶ 6.)
17 Although the timing of the events described by Sugawara at the
18 hearing is unclear, his statements raise a dispute of material
19 fact as to whether Brown drove towards Abe and the other officers
20 and whether Sugawara was in position to see the other officers.

21 In addition, Sugawara testified that at the time he fired
22 the first shot at Brown, he "had already let go because I think
23 what I did was, I let go with my left hand to get - - grab my
24 right hand to shoot, and at that point I was - - I was away from
25 the car." (Ex. A to Def.'s Supp. Brief at 21-22.) This
26 contradicts Sugawara's declaration and testimony from earlier in

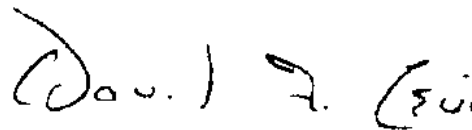
1 the deposition that he separated himself from Brown's vehicle
2 after firing the first shot. (Sugawara Decl. ¶¶ 11-12, 14; Ex. A
3 to Def.'s Supp. Brief at 13-14.) It also contradicts Abe's
4 statement that Sugawara fired the first shot while still clinging
5 to Brown's car door. (Supp. Abe Decl. ¶ 22.) Sugawara's
6 testimony also raises a dispute of material fact as to whether he
7 was caught in door of Brown's vehicle when he fired the first
8 shot. See Lee v. Gregory, 363 F.3d 931, 936 (9th Cir. 2004)
9 (holding that the district court did not err in finding that the
10 disputed facts, viewed in the light most favorable to the
11 plaintiff, created a triable issue of fact). Therefore, the
12 court DENIES Sugawara's renewed motion for summary judgment.

13 III.

14 For the reasons stated above, the court DENIES Sugawara's
15 renewed motion for summary judgment.

16 IT IS SO ORDERED.

17 Dated: 6/29/2006
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21 DAVID F. LEVI
22 United States District Judge
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